IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WA.No. 1892 of 2007

AGAINST THE JUDGEMENT IN OP.3256/2003
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APPELLANT/3RD PARTY:

MOHAN ISSAC,STATE GENERAL SECRETARY,
ENVIRONMENT AND FREEDOM PROTECTION NATIONAL TRUST,
REG.NO.271/96,E.N.FREE ASHRAMAM,
HAJIYARAPPILLY P.O,MALAPPURAM DISTRICT.

BY ADV. SRI.N.J.JOHNSON

RESPONDENTS/PETITIONER & RESPONDENTS IN OP:
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1. M/S.K.M.WOOD WORKS,ODANUR,PARALI P.O,
PALAKKAD DISTRICT,REP.BY ITS PROPRIETOR,
T.K.MADHUSUDANAN,S/O.KESAVAN,THANNIKAD HOUSE,
P.O KINAVALLUR,PARALI,PALAKKAD DISTRICT.

2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO THE FOREST
DEPARTMENT,GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

3. THE DIVISIONAL FOREST OFFICER,
PALAKKAD.

R2 & R3 BY SPECIAL GOVERNMENT PLEADER MR.RENJITH THAMPAN
SRI.K.A.SHAMSUDIN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1892 of 2007

Dated, this the 7th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

Appellant before us is the State General Secretary for Environment and Freedom Protection National Trust. With the permission of the Court he is prosecuting this appeal which is filed against the orders passed by the learned Single Judge in O.P.No.3256 of 2003 dated 27th October, 2006.

2. First respondent in the writ appeal had applied for grant of a licence to run a saw mill. Initially, the Divisional Forest Officer, Palakkad by his letter dated 24.7.2001 had granted permission/NOC to the first respondent to run a wood based industry in Sy.No.129/5 at Parali Village in the name and style of M/s.'KM Wood Industries'.

3. The very officer who had granted permission earlier, has passed yet another order dated 15.1.2003 cancelling the order passed by him on 24.7.2001. Being aggrieved by the said order dated 15.1.2003, the first respondent herein had filed O.P.No.3256 of 2003.

4. The learned Single Judge by his order dated 27th October, 2006 has allowed the writ petition and while doing so has relied upon the observations made by a Division Bench of this Court in the case of the *Nilambur Taluk Saw Mill Owners Association & another* v. *Jose P.Jacob & others* in W.A.No.1593 of 1999.

5. The facts in the aforesaid writ appeal are as under: An association was before this Court, inter alia, contending that the dicta laid down by the apex Court in *T.N.Godavarman Thirumalpad* v. *Union of India & others* (AIR 1997

SC 1228) cannot be applied to a wood industry which had a licence and after the expiry of the licence had applied for renewal of the same. The learned Judges keeping in view the dicta laid down by the apex Court in *Jawaharlal Sharma and another* v. *Divisional Forest Officer* [(2002) 3 SCC 42] have observed that the issue of a fresh licence and the grant of renewal of a licence are two different things and, therefore, the dicta laid down by the apex Court in *T.N.Godavarman Thirumalpad* case cannot be applied to a case where a wood industry/saw mill is seeking renewal of a genuine licence which would come within a distance of 5 K.Ms.

6. In the instant case, it is not the case of the petitioner that he had a licence and sought for renewal of the licence. It is his specific case that for the first time he had applied for grant of a fresh licence to start a wood based industry in Sy.No.129/5 of Parali Village. Therefore, in our opinion, the learned Single Judge, relying upon the decision in W.A.No.1593 of 1999 which has no nexus with the pleadings of the petitioner, could not have passed the impugned order.

7. Incidentally, in the writ petition the petitioner was primarily questioning Ext.P16 order wherein the authority who had granted NOC earlier has cancelled the NOC. The correctness or otherwise of that order should have been gone into by the learned Single Judge. Since that has not been done in the instant case, the orders passed by the learned Single Judge requires to be set aside and the matter requires to be sent back to the learned Judge for fresh consideration in accordance with law.

8. Accordingly the following:

Order

i) The writ appeal is allowed.

ii) The impugned order passed by the learned Single Judge dated 27th October, 2006 is set aside.

iii) O.P.No.3256 of 2003 is restored.

iv) The learned Single Judge is requested to consider the writ petition on merits.

v) The first respondent herein is directed to implead the appellant in this writ appeal as a respondent in O.P.No.3256 of 2003.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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